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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,183	04/20/2004	J. Dirk Vermeulen	47353-46503	1745
23646 7590 01/07/2010 BARNES & THORNBURG LLP 750-17TH STREET NW SUITE 900 WASHINGTON, DC 20006-4675				
EXAMINER MALLARI, PATRICIA C				
ART UNIT 3735		PAPER NUMBER		
NOTIFICATION DATE 01/07/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

vrobertson@btlaw.com
DocketingPAT-DC@btlaw.com

Office Action Summary

Application No.

10/709,183

Applicant(s)

VERMEULEN ET AL.

Examiner

PATRICIA C. MALLARI

Art Unit

3735

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 28-31, 35 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 28-31, 35 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is a final Office action. Any new grounds of rejection were necessitated by the applicants' amendments to the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26, 28-31, 35, and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,524,242 to Subramanyan et al. in view of US Patent No. 5,433,214 to Brehm or as being unpatentable over Subramanyan in view of Brehm and US Patent No. 4,168, 206 to Boyer. Regarding claims 24 and 35, Subramanyan teaches a method of employing a flowable indicator for characterizing skin condition. The method comprises applying a flowable indicator to a desired area of skin. The indicator includes at least one dye, soluble with oil found on human skin to effect a visual change of the indicator, which changes when in solution with at least one substance secreted by human skin and wherein a visual change in the dye is proportional to the amount of oil present in solution and is activated in response to a reaction of the indicator with the at least one substance found on the skin after a period of time to effect a visually discernable change of the indicator (see entire document, especially col. 2, lines 8-50; col. 6, lines 1-24 of Subramanyan). Subramanyan lacks

the visual change being a change in color or color intensity and further lacks a reference relating a plurality of possible changes to a plurality of skin conditions.

Brehm teaches a method of characterizing skin condition wherein an indicator is applied to a desired area of skin and is reactive to at least one substance secreted by the skin so that the indicator visually changes in color in response to reacting with the at least one substance. A degree of visual change in color of the indicator is representative of the amount of oil (fat) in contact with the indicator (see entire document, especially col. 3, line 32-col. 4, line 38 of Brehm). The method further comprises waiting for the indicator to activate and determining if the indicator is activated (see entire document, especially col. 3, line 66-col. 4, line 11 of Brehm), wherein examining the indicator at any point is a step of determining if the indicator is activated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use a color change, as described by Brehm, in place of the visual change of Subramanyan, as it would merely be the substitution of one known visual change for another. Further, such a substitution would simplify the method and the reduce the cost by replacing the need for a spectrophotometer with a scale or reference, wherein the visually discernable change of the indicator is compared to the scale or reference to characterize the skin condition, the reference relating a plurality of possible visual changes of color to the visual change of the indicator to characterize a skin condition due to the amount of oil in contact with the indicator(see entire document, especially fig. 4; col. 4, lines 31-38 of Brehm). Subramanyan, as modified, lacks

waiting further for the flowable indicator to activate if the user has determined that the flowable indicator is not yet activated.

However, one of ordinary skill in the art would recognize that periodic or multiple checks are sometimes needed to ensure that a substance has activated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to make multiple checks on the flowable indicator to ensure that the indicator activated. In the alternative or in addition US Patent No. 4,168,206 to Boyer discloses periodically checking a system for color changes (see entire document, especially col. 3, lines 11-19 of Boyer). Therefore, it would have been obvious to one of ordinary skill in the art to periodically check the system of Subramanyan, as modified, for color changes in order to ensure that a substance has activated.

Regarding claims 28, 29, 31, 37, 38, and 40, appropriate cosmetics are determined for use with the characterized skin condition (see entire document, especially col. 4, lines 35-39 of Brehm).

Regarding claims 30 and 39, a visual reference for comparison of the visually discernable change to a standardized reference point is provided (see entire document, especially fig. 4; col. 4, lines 31-38 of Brehm).

Response to Arguments

Applicant's arguments filed 9/25/09 have been fully considered but they are not persuasive.

As to applicants' arguments that none of the prior art references teach or suggest comparing a visually discernable change of an activated flowable indicator to a reference to characterize skin condition wherein the reference relates a plurality of possible visual changes to the visual change of the indicator to characterize a skin condition of human skin due to the amount of oil in contact with the indicator and wherein the flowable indicator comprises at least one dye soluble with oil found on human skin to effect the visual change of the indicator, the examiner disagrees. Subramanyan, as modified, teaches these limitations. In particular, Subramanyan teaches the flowable indicator comprising at least one dye soluble with oil found on human skin (sebum) to effect a visual change of the indicator (see entire document, especially col. 2, lines 8-50; col. 6, lines 1-24 of Subramanyan). Further, Brehm, which is relied upon to show the use of a color change as the visual change and the comparison to a reference, teaches comparing the visual change to a reference, the reference relating a plurality of possible visual changes of color to the visual change of the indicator to characterize a skin condition of the human skin due to the amount of oil in contact with the indicator (see entire document, especially fig. 4; col. 4, lines 31-38 of Brehm). Therefore, the combination of references teaches the claimed limitations. The rejections stand.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICIA C. MALLARI whose telephone number is (571)272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/
Primary Examiner, Art Unit 3735